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NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LUIS SANTANA,

Petitioner,

vs.

JAMES A. YATES, Warden

Respondent.

No. C 07-5424 JF (PR)

ORDER TO SHOW CAUSE

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee. The Court orders Respondent to show cause why the petition should not be granted.

BACKGROUND

Petitioner entered a nolo contendere plea in Sonoma Superior Court to attempted murder and witness intimidation. Petitioner admitted the allegations of great bodily injury and criminal street gang enhancements concerning the attempted murder count. On December 17, 2004, petitioner was sentenced to twenty-six years and eight months in state prison. On direct appeal, the state appellate court directed the trial court to amend the abstract of judgment concerning a separate burglary charge and affirmed the judgment on January 16, 2007. The instant federal habeas petition was filed on October 24, 2007.

1 **DISCUSSION**

2 A. Standard of Review

3 A district court may entertain a petition for writ of habeas corpus "in behalf of a
4 person in custody pursuant to the judgment of a State court only on the ground that he is
5 in custody in violation of the Constitution or laws or treaties of the United States." 28
6 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

7 A district court shall "award the writ or issue an order directing the respondent to
8 show cause why the writ should not be granted, unless it appears from the application that
9 the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

10 B. Petitioner's Claims

11 Petitioner alleges the following claims for habeas relief: (1) the trial court
12 improperly sentenced Petitioner to a full strength consecutive sentence on the witness
13 intimidation count; and (2) the imposition of the upper term sentence violated Blakely v.
14 Washington¹ and Petitioner's federal constitutional right to a jury trial. Liberally
15 construed, Petitioner's claims are sufficient to require a response. The Court orders
16 Respondent to show cause why the petition should not be granted.

17 **CONCLUSION**

18 1. The Clerk shall serve by mail a copy of this order and the petition and all
19 attachments thereto upon Respondent and Respondent's attorney, the Attorney General of
20 the State of California. The Clerk shall also serve a copy of this order on the Petitioner.

21 2. Respondent shall file with the Court and serve on Petitioner, within **sixty**
22 **days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the
23 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
24 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of
25 all portions of the state criminal proceedings that have been transcribed previously and
26 that are relevant to a determination of the issues presented by the petition.

27 _____
28 ¹Blakely v. Washington, 542 U.S. 296 (2004).

1 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse
2 with the Court and serving a copy on Respondent within **thirty days** of his receipt of the
3 answer.

4 3. Respondent may file a motion to dismiss on procedural grounds in lieu of
5 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
6 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file
7 with the court and serve on Respondent an opposition or statement of non-opposition
8 within **thirty days** of receipt of the motion, and Respondent shall file with the Court and
9 serve on Petitioner a reply within **fifteen days** of receipt of any opposition.

10 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
11 the Court and all parties informed of any change of address by filing a separate paper
12 captioned "Notice of Change of Address." Petitioner must comply with the Court's
13 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
14 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

15 IT IS SO ORDERED.

16 DATED: 4/8/08


JEREMY FOGEL
United States District Judge

Other Orders/Judgments

5:07-cv-05424-JF Santana v. Yates

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U.S. District Court
Northern District of California
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Case Number: 5:07-cv-5424

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Docket Text:

ORDER TO SHOW CAUSE. Signed by Judge Jeremy Fogel on 4/8/08. (dlm, COURT STAFF) (Filed on 4/10/2008)

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